

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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MAR 28 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of

**TELEPHONE AND DATA SYSTEMS,  
INC.**

For facilities in the Domestic Public  
Cellular Telecommunications Radio Service  
on Frequency Block B, in Market 715,  
Wisconsin 8 (Vernon), Rural Service Area

) CC Docket No. 94-11  
)  
) File No. 10209-CL-P-715-B-88  
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)  
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To: Honorable Joseph P. Gonzalez  
Administrative Law Judge

**COMMON CARRIER BUREAU'S COMMENTS IN OPPOSITION  
TO PETITION TO INTERVENE**

On March 18, 1994, Henry M. Zachs, d/b/a/ Massachusetts-Connecticut Mobile Telephone Co. (Mass-Conn), filed a Petition to Intervene in the above-captioned proceeding pursuant to Section 1.223(b) of the Commission's Rules. 47 C.F.R. § 1.223(b). The Acting Chief, Common Carrier Bureau (Bureau) opposes Mass-Conn's request.

1. Section 1.223(b) of the Rules requires that a potential intervenor set forth its interest in the proceeding and show how its participation will assist in the determination of the designated issues. See RKO General, Inc., 94 FCC 2d 879 (1983). Mass-Conn has failed to meet this burden. Mass-Conn has not specified any interest in the proceeding. Mass-Conn was not an applicant in the Wisconsin 8 market and it has no interest in that market. Moreover, Mass-Conn has no pending disputes against TDS which raise the unresolved character La Star Cellular

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Telephone Company issues.<sup>1</sup> With regard to its interest in the proceeding, Mass-Conn only states that it is a minority partner in a partnership with Telephone and Data Systems, Inc. (TDS) as the controlling partner, for the non-wireline cellular authorization in Evansville, Indiana.<sup>2</sup> Mass-Conn, however, has not indicated how its partnership with TDS in Evansville Cellular has given it an interest in this proceeding.

2. The outcome of this proceeding will have no immediate effect on either Mass-Conn's or TDS's interest in Evansville Cellular. Evansville Cellular is operating with an unconditioned license.<sup>3</sup> Although the Bureau believes that the instant proceeding involves a broad determination as to TDS's character qualifications, should any adverse findings be made against TDS, the Commission would have to initiate a proceeding pursuant to Section 312 of the Communications Act of 1934 in order to take any action against TDS in the Evansville market. Mass-Conn would certainly have standing to participate in that proceeding. Because Mass-Conn has no interests at stake in this proceeding, and because it will have the opportunity to represent any interests it may have in future proceedings, Mass-Conn should not be allowed to intervene.

3. Moreover, Mass-Conn has not demonstrated that it will be able to assist in the

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<sup>1</sup> The Order designating TDS's application for hearing recognized that other parties have pending disputes against TDS or one of its subsidiaries and that these disputes may give them an interest in this proceeding. The Order stated that those parties may file petitions to intervene. See Telephone and Data Systems, Inc., FCC 94-29 (1994) at ¶ 38.

<sup>2</sup> Evansville Cellular Telephone Company, Inc. (Evansville Cellular) is the licensee for the Evansville, Indiana/Kentucky Metropolitan Statistical Area.

<sup>3</sup> The Bureau has been conditioning grants of all licenses of new facilities, transfers of control, assignments of licenses, and modifications of facilities to TDS and its subsidiaries since the Commission left the character issues raised in the La Star Cellular Telephone Company proceeding unresolved. See La Star Cellular Telephone Company 7 FCC Rcd 3762, 3767, n.3 (1992). The Commission in the Order designating the issues in the instant proceeding for hearing, instructed the Bureau to continue conditioning such grants on the outcome of this proceeding.

resolution of the designated issues. Mass-Conn states that it will be able to assist in crafting penalties against TDS which protect innocent third parties. Mass-Conn's reasoning that it can assist in crafting a penalty to be assessed against TDS is premature. The designated issues are concerned with TDS's character qualifications and whether a TDS subsidiary misrepresented facts, lacked candor, or attempted to mislead the Commission. No determination needs to be made about what penalties to assess until a determination has been made that TDS lacks character. Mass-Conn has proffered no evidence that it will be able to assist in making that determination. Furthermore, the assistance Mass-Conn states it can give will not be helpful even in the event findings are made against TDS. As stated above, in order for the Commission to take any action against an unconditioned grant to TDS, the Commission must initiate a proceeding pursuant to Section 312 of the Act. Therefore, the "innocent third parties" of concern to Mass-Conn will not be affected by any action taken against TDS. Mass-Conn should, therefore, not be allowed to intervene since it wishes to address issues not relevant to the designated issues. See GAF Broadcasting Company, Inc., 8 FCC Rcd 6678 (Rev. Bd. 1993).

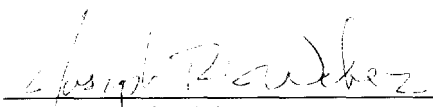
For the foregoing reasons, the Bureau opposes the Petition for Leave to Intervene filed by Henry M. Zachs, d/b/a Massachusetts-Connecticut Mobile Telephone Co.

Respectfully submitted,

A. Richard Metzger  
Acting Chief, Common Carrier Bureau

March 28, 1994

By:

  
Joseph Paul Weber  
Trial Attorney

### CERTIFICATE OF SERVICE

I, Elizabeth Williams, do hereby certify that on March 28, 1994, copies of the foregoing Comments in Opposition to Petition to Intervene were served by first-class mail, U.S. Government frank, except as otherwise noted, on the following parties:

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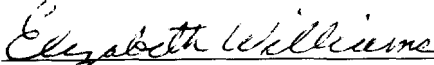
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